

State gets low grade for civil asset forfeiture laws

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By PHIL DRAKE

Montana sits with many other states below C level as it recently received a D+ in a study by a civil liberties law firm for its policies regarding civil asset forfeiture laws.

"Montana has terrible civil forfeiture laws," claims a report by the Institute for Justice, a Washington, D.C.-based Libertarian public interest law firm. "The state only requires probable cause to forfeit property. This is the lowest standard of proof the government must meet to prove your property is related to a crime."

Kevin O'Brien, a spokesman for the Montana Department of Justice, said the state follows strict accounting procedures outlined by federal and state law when it comes to asset forfeiture. He declined further comment.

The March 30 report, "Policing for Profit: The Abuse of Civil Asset Forfeiture," claims the person is presumed guilty once their property is seized. And they have the burden of proving the property was not forfeitable or the conduct leading to the seizure was without their knowledge or consent.

Criminal forfeiture is tied to the legal conviction of the person and the government must show the accused's guilt beyond a reasonable doubt. Civil forfeiture allows law enforcement to confiscate items in alleged crimes, whether the property owner is guilty or innocent, Institute for Justice Attorney Scott Bullock said.

Also in Montana, forfeiture funds are used to pay a portion of the salaries of some county prosecutors, the study claims. The study's authors state the exact amounts and how the funds are used are difficult to determine because there is no requirement that forfeiture data be reported.

According to the report, Montana took in nearly \$3.8 million in Asset Forfeiture Funds between 2000-2008, averaging \$427,649 a year.

For the first time in 2008, the U.S. Department of Justice's forfeiture fund topped \$1 billion in assets taken from property owners and the money is now available to federal law enforcement agencies, according to the report.

The report, compiled by criminal justice researchers Marian R. Williams and Jefferson E. Holcomb of Appalachian State University and Tomislav V. Kovandzic of the University of Texas at Dallas – claims that in civil asset forfeiture, a property owner need not be found guilty of a crime, or even charged, to lose their money, vehicle or home forever.

The Institute for Justice recommends law enforcement should convict people before taking their property; do not pay police or prosecutors on commission and forfeiture funds should be put in a neutral fund, such as a state's general fund. It should also be tracked and reported so law enforcement is held publicly accountable.

Six states received an F and 29 states got graded a D. Maine was the only state to get an A and North Dakota and Vermont got B's.

In a foreword to the report, Bullock proposes ending the direct profit incentive included in civil forfeiture laws. He states civil forfeiture revenue should be placed into a neutral fund, such as education, drug treatment or in a county or state government's general fund.

Bullock also suggests:

- Placing the burden of proof on government for alleged wrongdoing and removing the burden on property owners to prove their innocence;
- Stop equitable sharing arrangements with the federal government. If a state ends policing for profit, officials should not be able to team up with the federal government to forfeit property;
- Require law enforcement to prove its decision in forfeiture cases with convincing evidence.

For more information on "Policing for Profit: The Abuse of Civil Asset Forfeiture," go to:
http://www.ij.org/index.php?option=com_content&task=view&id=3291&Itemid=165.